IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1126 OF 2005

Jayantilal S. Limbachiya ...Petitioner

V/s

Aarti Sashru Deshmukh
and Ors. ...Respondents.

Mr. S.V. Marwadi i/b Ramesh Jain & Mrs. Kusum Jain
for the petitioner.

Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 29th April 2005

P.C.:

1. Petitioner is challenging the order of issuance of process by the J.M.F.C., 7th Court, Thane on a complaint filed under section 138 of the Negotiable Instruments Act.

2. It is submitted by the learned Counsel appearing on behalf of the petitioner that the complainant had filed complaint after suppressing various important material facts. It is submitted that the complainant had admitted in her correspondence that she was having in her possession the said cheque in the year 2001 itself. It is submitted that there was no existing debt or liability due and payable to the complainant and, therefore, order of issuance of process was

liable to be set aside. The learned Counsel has relied on documents which are annexed to the petition. He has also relied on stop payment instructions which were given by the accused.

3. It is not possible to accept the submissions made by the learned counsel appearing on behalf of the petitioner. The question whether there was an existing debt or liability is a question of fact which will have to be established by the complainant in the trial court and the accused shall have to rebut the presumption which is raised against him under section 139. All questions raised in this petition are, therefore, kept open which shall be decided by the trial court after evidence is adduced by both parties on merits and in accordance with law.

4. Criminal Writ Petition is accordingly dismissed.

V.M. KANADE, J.